



**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)	
)	
BARBARA FECHT,)	
)	
Complainant,)	
)	Charge No.: 1997CF1925
and)	EEOC No.: 21B971502
)	ALS No.: 10288
MARTIN TITLE COMPANY,)	
)	
)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

On December 29, 1997, the Illinois Department of Human Rights filed a complaint on behalf of Complainant, Barbara Fecht. That complaint alleged that Respondent, Martin Title Company, sexually harassed Complainant.

On December 20, 2000, Respondent's attorneys were given leave to withdraw. No other attorney ever entered an appearance on Respondent's behalf, and Respondent took no further actions to defend itself. As a result, on March 28, 2001, Respondent was found to be in default.

A hearing on damages was held on June 19, 2001 in Dixon, Illinois. Although notice of that hearing was sent to Respondent's last known address, Respondent did not appear at the hearing.

Subsequently, Complainant filed a written motion for

attorney's fees. That motion was served upon Respondent, but no response to the motion was filed and the time for filing such a response has passed. The matter is now ready for decision.

FINDINGS OF FACT

The following facts were taken from the complaint in this matter, the allegations of which are deemed to be admitted, and from the preponderance of the evidence at the damages hearing held in this matter.

1. Respondent, Martin Title Company, hired Complainant, Barbara Fecht, in or about August, 1987, as a data entry clerk.

2. Throughout her tenure with Respondent, Complainant performed her job duties in a satisfactory manner, consistent with Respondent's standards.

3. George Martin owned Respondent and ran the business.

4. From the time Complainant began her work with Respondent, Martin would make inappropriate sexual comments to her and touch her without her permission. Martin's behavior became worse in the last part of 1996.

5. Martin frequently would come up behind Complainant, put his hand on her shoulder, run that hand down her back to her butt, then leave his hand on her until he was done talking to her.

6. Martin frequently came up behind Complainant while she was typing, ran his hands along her shoulders, and touched her breasts.

7. Martin told Complainant that he wanted to make love to her and said to her, "If you and I get together just once, you may never go back to your husband, then again, you might not be that good."

8. Martin made frequent comments about Complainant's body.

9. Complainant stopped wearing dresses and skirts to the office because of Martin's offensive comments every time she wore a dress or skirt.

10. Martin often talked about women's body parts in Complainant's presence, and would try to kiss Complainant in the office.

11. Martin's inappropriate behavior occurred virtually every day.

12. When Complainant told Martin to stop, he would say, "Why should I?"

13. Martin never altered his behavior in response to Complainant's requests.

14. Martin's behavior was very embarrassing to Complainant. She eventually got to the point where she did not want to go to the office.

15. In February of 1997, Complainant found another job and quit her job with Respondent.

16. Complainant would not have left her job with Respondent if not for Martin's behavior. That behavior made it impossible for Complainant to remain.

17. Complainant chose not to see a doctor to address her emotional problems.

18. Complainant should be compensated in the amount of \$25,000.00 for the emotional distress caused by Respondent's actions.

19. When Complainant left Respondent, she was working full-time and earning \$13.00 per hour. Her new job paid only \$8.75 per hour.

20. In May of 1999, Complainant found a new job that paid her \$9.50 per hour.

21. In October of 2000, Complainant left the work force when she decided to stay home with a new baby.

22. Complainant is seeking compensation for the work of attorney Michael J. McCarthy at the rate of \$150.00 per hour for 18.8 hours.

23. The requested hourly rate and the requested number of hours are reasonable under these circumstances and should be accepted.

CONCLUSIONS OF LAW

1. Complainant is an "aggrieved party" as defined by section 1-103(B) of the Illinois Human Rights Act, 775 ILCS 5.1-101 *et seq.* (hereinafter "the Act").

2. Respondent is an "employer" as defined by section 2-101(B)(1)(b) of the Act and is subject to the provisions of the Act.

3. Because it was found to be in default, Respondent has admitted the allegations of the complaint.

4. Because of its failure to file an objection to Complainant's request for attorney's fees, Respondent has waived its right to object to such fees.

DISCUSSION

Respondent initially appeared and began to mount a defense, but its attorneys were given leave to withdraw in December of 2000. No other attorney ever entered an appearance on Respondent's behalf, and the company took no further actions to defend itself. Therefore, on March 28, 2001, Respondent was found to be in default.

As a result of the default order, Respondent is deemed to have admitted the allegations of the complaint. ***Bielecki and Illinois Family Planning Council***, 40 Ill. HRC Rep. 109 (1988). Accordingly, a finding of liability against Respondent is appropriate. A basic overview of the facts is needed, though, to allow a meaningful discussion of the appropriate damages.

Respondent, Martin Title Company, hired Complainant, Barbara Fecht, in or about August, 1987, as a data entry clerk. George Martin owned Respondent and ran the business.

From the time Complainant began her work with Respondent, Martin would make inappropriate sexual comments to her and touch her without her permission. Martin's behavior became worse in the last part of 1996. For example, Martin frequently would come

up behind Complainant, put his hand on her shoulder, run that hand down her back to her butt, then leave his hand on her until he was done talking to her.

Martin frequently came up behind Complainant while she was typing, ran his hands along her shoulders, and touched her breasts. He also told Complainant that he wanted to make love to her and said to her, "If you and I get together just once, you may never go back to your husband, then again, you might not be that good."

Martin made frequent comments about Complainant's body, to the point that she stopped wearing dresses and skirts to the office because of his offensive comments every time she wore a dress or skirt. He often talked about women's body parts in her presence, and would try to kiss her in the office.

There were numerous other examples of inappropriate behavior from Martin, and that type of behavior occurred virtually every day. When Complainant told Martin to stop, he said, "Why should I?" He never altered his behavior in response to Complainant's requests.

Martin's behavior was very embarrassing to Complainant, and she eventually got to the point where she did not want to go to the office. Finally, in February of 1997, Complainant found another job and resigned her position with Respondent.

The above facts are by no means complete. They are, however, representative of the behavior Complainant endured.

They also provide a background against which appropriate damage awards can be measured.

It appears from the above facts that Complainant was constructively discharged. To prove a constructive discharge, Complainant had to prove that Respondent made her working conditions so difficult or unpleasant that a reasonable person in her position would have felt compelled to resign. **Brewington v. Dep't of Corrections**, 161 Ill. App. 3d 54, 513 N.E.2d 1056 (1st Dist. 1987). Given the severity and frequency of Martin's harassing actions, the record easily meets the **Brewington** standard. Since Complainant was constructively discharged, she is entitled to an award of backpay.

Complainant went directly from her job with Respondent to a position with a different employer. However, the new job paid only \$8.75 per hour, as opposed to the \$13.00 per hour she earned with Respondent. Thus, she lost \$4.25 per hour with her new job. In May of 1999, she found a better job that paid her \$9.50 per hour. In October of 2000, Complainant withdrew from the job market to stay home with a new child.

Complainant testified that she worked about 4,100 hours at the \$8.75 per hour rate. Using that figure, she lost \$17,425.00 during that period. She testified that she worked approximately 3000 hours at the \$9.50 per hour rate, a loss of \$10,500.00. Thus, she lost a total of \$27,925.00. Backpay liability ceased in October of 2000, when Complainant resigned and left the job

market. See *Cliburn and Veterans of Foreign Wars, Dep't of Ill.*, 42 Ill. HRC Rep. 176 (1988). Therefore, the \$27,925.00 figure is the total recommended backpay award.

Because of the delay in the receipt of the backpay due her, prejudgment interest on the backpay award is necessary to make Complainant whole. Such interest is recommended.

Complainant also is entitled to an award of damages for the emotional distress caused by Martin's sexual harassment. As usual, though, the precise amount of such an award is difficult to determine.

There was little evidence of the effect on Complainant other than testimony that she was embarrassed. Still, the harassment she endured was egregious. Martin was remarkably persistent in his actions, bothering her on a daily basis for years. Fortunately for Complainant, she was able to cope without the need for medical help. Nonetheless, given the embarrassment Complainant was forced to tolerate, harassment on such a large scale requires a significant award.

The Commission awarded \$12,000.00 in emotional distress damages on similar facts in *York and Al-Par Liquors*, ___ Ill. HRC Rep. ___, (1986CF0627, June 29, 1995). The complainant in *York* was a cashier in a convenience store. She was harassed on a daily basis by the store manager, who grabbed and touched her.

Despite the similarity in facts, there are two reasons why the award in *York* would be too small in the instant case. First,

York described events which took place in the mid-1980's, and inflation alone would justify a larger award. Second, the complainant in **York** endured only nine months of harassment, while Complainant in the instant case was harassed for a period of several years.

It is recommended that Complainant be awarded \$25,000.00 for her emotional distress. In light of the lack of evidence of specific emotional symptoms, that amount should be sufficient to compensate her for the embarrassment she described.

There is information in the record, which indicates that Respondent is no longer doing business. Nevertheless, there are two types of relief which were not specifically requested, but which are appropriate. First, Respondent should be ordered to clear its records of any reference to this action or to the underlying charge of discrimination. Next, Respondent should be ordered to cease and desist from further sexual harassment.

Finally, there is the issue of attorney's fees. In an order entered on August 28, 2001, Complainant was given leave to file a motion for fees. She filed such a motion and served it upon Respondent. The August 28 order provided that Respondent could file a written response to the motion within 21 days of the service of the motion. The order specifically stated that failure to file a response to the motion "will be taken as evidence that Respondent does not contest the amount of such fees." Although more than 21 days have passed since Complainant

filed her motion for fees, Respondent has not filed any response. As a result, Respondent has waived the issue of attorney's fees. **Mazzamuro and Titan Security, Ltd.**, ___ Ill. HRC Rep. ___, (1989CN3464, October 21, 1991). Even without that waiver, though, it would be recommended that Complainant receive the fees she has requested.

Complainant requested compensation for 18.8 hours at \$150.00 per hour. The support for the hourly rate is virtually nonexistent, but the requested rate is quite reasonable in this forum, and it is recommended that the rate be accepted. The number of requested hours is documented and reasonable under these circumstances. The total recommended fee award is \$2,820.00. That amount should be fully compensatory.

RECOMMENDATION

Based upon the foregoing, it is recommended that the complaint in this matter be sustained in its entirety and that an order be entered awarding the following relief:

A. That Respondent pay to Complainant the sum of \$27,925.00 for lost backpay;

B. That Respondent pay to Complainant prejudgment interest on the backpay award, such interest to be calculated as set forth in 56 Ill. Adm. Code, Section 5300.1145;

C. That Respondent pay to Complainant the sum of \$25,000.00 for the emotional distress suffered by Complainant as the result of Respondent's actions;

D. That Respondent pay to Complainant the sum of \$2,820.00 for attorney's fees reasonably incurred in the prosecution of this matter;

E. That Respondent clear from Complainant's personnel records all references to the filing of the underlying charge of discrimination and the subsequent disposition thereof;

F. That Respondent cease and desist from further acts of sexual harassment.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL J. EVANS
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: May 20, 2002